

The Otsego Town Board held a regular monthly meeting on the 11<sup>th</sup> day of February 2015 at the Town Building, Fly Creek, NY at 7:00 PM.

Town Board Members Present:

Anne Geddes-Atwell	Supervisor
Thomas Hohensee	Councilperson
Bennett Sandler	Councilperson
Julie Huntsman	Councilperson
Carina Franck	Councilperson

Also Present:

John Schallert	Highway Superintendent
Michelle Kennedy	Town Attorney
Pamela Deane	Town Clerk

Supervisor Geddes-Atwell called the regular meeting to order and asked all those present to please rise for the Pledge of Allegiance.

MOTION by Councilperson Huntsman, seconded by Councilperson Hohensee, to accept the minutes of January 14<sup>th</sup>.

MOTION CARRIED: All were in favor.

Supervisor Geddes -Atwell read correspondence received since last meeting.

Supervisor Geddes-Atwell opened the floor for comments.

County Representative Rick Hulse stated that Brian Pokorny, Otsego County Director of IT is willing to host the Town's website at little or no cost to the Town. The County's draft for an RFP for a Strategic Plan is up for review and is scheduled to be put out for a response later this month. All townships in Otsego County will be encouraged to participate. The County is negotiating with Onondaga County to be able to purchase off of their contracts. Because of their purchasing volume, they have a lot more purchasing power than Otsego does. The County has already determined that if they were to buy salt off Onondaga's contracts they could save anywhere from \$30,000.00 to \$40,000.00. Hulse explained that if the County enters into a purchasing agreement with Onondaga County all townships in Otsego County would also be eligible to purchase items off the same agreement.

Fly Creek resident Eileen Kukenberger commented on a letter that she wrote to the Board. She expressed concerns with a Service Trade Establishment application submitted by Roger Heroux to be located on County Highway 26. She feels that the 80ft x120ft building is out of scale, density and appearance and alters the essential character of the area as well as impacts the visual resources. The Planning Board did not address Heroux's request for outside storage, which the Town's Land Use Law does not allow. They simply approved his application. In closing, she stated that she feels that this building belongs in a commercial district not residential.

MOTION by Councilperson Sandler, seconded by Councilperson Franck, to close the floor for Comments. .

MOTION CARRIED: All were in favor.

Supervisor Geddes-Atwell gave a financial report. Balances are as follows in the various accounts:

General Savings: \$ 4,678.19	General Checking: \$ 514,421.36
Highway Savings: \$ 7,800.00	Hwy Checking: \$ 863,662.53
Building Reserve Fund: \$150,710.49	Hwy Equipment Fund: \$102,781.89

MOTION by Councilperson Sandler, seconded by Councilperson Huntsman, to accept the financial report as given.

MOTION CARRIED: All were in favor.

MOTION by Councilperson Sandler, seconded by Councilperson Huntsman, to pay the following invoices as well as make the necessary transfers.

GENERAL: #21-#40	\$ 40,027.16
HWY: #16-#29	\$13,868.64

MOTION CARRIED: All were in favor.

Planning Board alternate John Phillips, reported that the Heroux application for a Service Trade Establishment was approved. Phillips stated that Heroux was given a list of things that he needed to complete in order for his application to be considered and he met all of the requirements. Phillips stated that across the street from where Heroux was proposing his Service Trade Establishment there is already a Service Trade Establishment along with a cabinet maker and mining operation. Phillips stated that Heroux on his own established a berm and planted trees to serve as screening and he had no history of violations. The roof exceeds a 4/12 pitch, which he felt was barn like. He did not feel the Planning Board had any control over the metal siding. Without the building Phillips stated that there is nothing in the Land Use Law preventing Heroux from storing as much equipment on his property as he wishes. During the public hearing Heroux and his engineer Jon McManus answered all questions

posed by the public. Phillips felt all criteria was met.

Town Attorney Michelle Kennedy asked Phillips if Heroux were to want to add additional structures or modify his site plan would he be required to go before the Planning Board for approval?

Phillips replied that anyone who wants to make a change to his or her site plan, no matter how small, must seek approval from the Planning Board first.

Councilperson Sandler asked Town Attorney Michelle Kennedy if she felt the Planning Board acted appropriately. Kennedy replied that she would have clarified for the applicant on the record that outside storage will be prohibited if not consistent with the Town Land Use Law. The Town Land Use Law, as explained by Kennedy, requires the operation shall not exceed in intensity of use that of a home occupation. For example, the outdoor storage of heavy machinery unrelated to a farming operation is prohibited as beyond the scope of a home occupation. The law tries to balance the interest of business with the interest of preserving the character of the neighborhood. Kennedy expressed her interpretation that any additional development beyond the one building would require site plan review as an expansion of the use.

Councilperson Franck proposed the following amendments to the Land Use Law:

- Change to the “Service Trade Establishment” definition to: Construction, building trades and/or maintenance businesses, provided that only storage, light fabrication and/or office functions are conducted on the premises, the operation takes place wholly within one principal or accessory building that does not exceed 3000 square feet and those aspects of the operation which exceed a home occupation in intensity of use are conducted off the premises. The maximum building square footage of 3000 square feet shall not apply to any Service Trade Establishment that meets the requirements of Section 3.15, “Heirloom Barn and Buildings.” If the Service Trade Establishment is situated within a residential dwelling, the Service Trade Establishment may only occupy up to 3000 square feet of total floor area, but the total square footage of the residence may exceed 3000 square feet.
- Strike “Self-storage Units” as a Special Permitted Use in the RA-2 District: Omit the definition for Self – Storage Units.
- Strike “Warehouse and Storage Area” as a Special Permitted Use in the GB-2 District.
- Strike “Commercial Storage” as a Special Permitted Use in the GB -1 and G-2 Districts. Omit the definition for Commercial Storage.
- Add under Article VII Administration and Enforcement: ZEO is authorized to issue Stop Work Orders and Appearance Tickets and
- Clarify Section 1.04, which reads, “Modifications, alterations and necessary repairs to an existing structure may be subject to building permit requirements, but will not require Planning Board review,” to be applicable only to “**conforming**” structures.

Dog Control Officer Tom Steele reported answering three calls since last month.

John Schallert gave the Highway Superintendent report. He stated that cars parking on the road have created a problem while the highway crew is out plowing. Options were discussed.

Schallert asked the Town Board to inquire from the Lamont Engineering what size culvert they would recommend to be put in below Brian Kegleman’s residences located at the base of Murdock Rd.

Town Attorney Michelle Kennedy reported that Brian Kegelman has requested a meeting. It was decided that Councilperson Sandler and Kennedy would schedule a meeting with Kegelman.

MOTION by Councilperson Franck, seconded by Councilperson Sandler to go into Executive Session to discuss Highway personnel issues.

MOTION CARRIED: All were in favor. (8:50PM)

MOTION by Councilperson Franck, seconded by Councilperson Huntsman, to come out of Executive Session.

MOTION CARRIED: All were in favor. (8:55PM)

Supervisor Geddes Atwell submitted an Investment Policy, which was reviewed by the Board.

MOTION by Councilperson Sandler, seconded by Councilperson Hohensee, to accept the proposed Investment Policy by Supervisor Geddes-Atwell.

MOTION CARRIED: Supervisor Geddes-Atwell, Councilpersons Franck, Hohensee and Sandler voted yes. Councilperson Huntsman abstained.

Supervisor Geddes-Atwell submitted the Fire and Ambulance Contract between the Town of Otsego and the Village of Cooperstown, which the Board reviewed.

MOTION by Councilperson Huntsman, seconded by Councilperson Hohensee, authorizing Supervisor Geddes-Atwell to sign the proposed Fire and Ambulance Contract between the Town of Otsego and the Village of Cooperstown.

MOTION CARRIED: All were in favor.

MOTION by Supervisor Geddes-Atwell, seconded by Councilperson Huntsman, to appoint Fly Creek resident Dean Robinson to the 1-year alternate ZBA vacancy.

MOTION CARRIED: All were in favor.

Town Attorney Michelle Kennedy discussed with the Board a letter she received from Attorney Lester Sittler, who is representing the Cider Mill. In the letter Sittler takes the position that his client is not required to seek variances before the ZBA and he bases this legal opinion on case law out of the 4<sup>th</sup> appellate division which states that if the height of a building is increased even if the building, is nonconforming, you are not increasing the use.

Kennedy referenced a later case from 1997 that comes out of the 3<sup>rd</sup> appellate division which recognizes the 4<sup>th</sup> Dept. case but reaches an alternate conclusion, requiring a use variance when increasing the height of a structure because as the court reasoned, the degree of nonconformity is increased.

Sittler also points out that under Section 1.04 of the Town's Land Use Law there is a provision that modifications, alterations, or repairs do not have to seek anything more than a building permit.

Kennedy argues that Section 1.04 only pertains to conforming uses. It is her position that the Cider Mill is required to go before the ZBA for a use variance.

MOTION by Councilperson Franck, seconded by Councilperson Huntsman, appointing the Town Board lead agency for the proposed amendments to the Land Use Law and designating the action as a Type I Action under SEQRA.

MOTION CARRIED: All were in favor.

In reference to the proposed Land Use Law changes, Attorney Kennedy read SEQRA questionnaire form, which was answered by the Town Board.

MOTION by Councilperson Huntsman, seconded by Councilperson Sandler, to declare a negative declaration for the proposed action.

MOTION CARRIED: All were in favor.

MOTION by Councilperson Franck, seconded by Councilperson Hohensee, to schedule a Public Hearing on March 11<sup>th</sup> at 7:00PM for the proposed changes.

MOTION CARRIED: All were in favor.

MOTION by Councilperson Sandler to adjourn:

MOTION CARRIED: All were in favor.

Meeting ended at 10:00PM.

The next regular meeting will be at the Town Building in Fly Creek on the 11<sup>th</sup> day of March 2015 at 7:00PM.

Respectfully Submitted,  
Pamela Deane/Town Clerk